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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/617,156	07/17/2000	Darrell Metcalf		8276

7590
Darrell Metcalf
905 N Oak Avenue
Fillmore, CA 93015

EXAMINER

ARAQUE JR, GERARDO

ART UNIT	PAPER NUMBER
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3689

MAIL DATE	DELIVERY MODE
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04/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Notice of Non-Compliant
Amendment (37 CFR 1.121)**

Application No.

09/617,156

Examiner

Gerardo Araque Jr.

Applicant(s)

METCALF, DARRELL

Art Unit

3689

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 28 January 2008 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____.
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☐ E. Other: _____.
- ☒ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):
See Continuation Sheet

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

/Janice Mooneyham/ SPE 3689

Legal Instruments Examiner (LIE), if applicable

Telephone No.

Continuation of 5 Other: The amendments filed claim to have canceled claims 1 - 128, however, there was no claim 128 ever presented in claims that have been priorly submitted. Furthermore, in the amendment submitted on 5/21/08 wherein applicant cancelled claims 1-128, applicant added new claims 129-245. A non-responsive amendment was mailed to applicant on 8/21/07. In the amendment submitted on 1/28/08, applicant submitted claims 129-245 again. However, applicant amended these claims from the claims submitted on 5/21/07. Applicant has failed to properly provide the proper identifiers to each of the newly submitted claims, i.e., any amendment changes the status identifier from "new" to "amended", and has also failed to properly indicate which portions of the claims has been amended as required. An example would be claim 129 where applicant has added "one or more deliverables" in the preamble of the claim, which was never provided in the claims submitted on 5/21/2007. Applicant is also advised that there may be new subject matter that has not been provided in the provisional application, 60/144210, submitted on 7/19/1999 and thus applicant will not get the priority benefit of any newly added subject matter.

Furthermore, newly submitted claims 129 - 245 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Applicant has claimed a completely different invention than those that were originally submitted on 7/17/2000. Specifically, the newly submitted claims are missing several elements that were originally presented in the original claims, such as a browser device. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 129 - 245 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03..

Applicant may want to consider filing a continuation or divisional application.